IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.287 OF 2007
IN
M.C.O.C.A.CASE NO.21 OF 2005

Mukund Kanhailal Patel ...Applicant.

Versus

The State of Maharashtra ...Respondent.

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Mr.Sushan Kunjuraman, Adv. for the Applicant.
Mr.S.S.Pednekar, APP, for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 28th March, 2007.

P.C.:

1. Heard the learned Advocate for the Applicant-orig.accused No.1 and the learned APP for the State.

2. The applicant is seeking bail in DCB CID L.A.C. No.31 of 2005 (Kandivali Police Station L.A.C.No.28 of 2005. The said case is under Sections 3, 7, 10, 25 of the Arms Act r/w. Section 120-B, 420 of IPC r/w. Section 3(1)(ii) and 3(2) and 3(4) of the MCOC Act, 1999 r/w. Section 135 of the Customs Act, 1962.

3. It is the prosecution case that on 20.5.2005 reliable information was received that one Mukund Patel (applicant) affiliated to Chhota Rajan gang indulging in illegal trafficking of firearms and ammunitions was likely to come around midnight to meet his associates near Lata Bar and Restaurant, Kandivali (West) Railway Station, Mumbai. Accordingly, a trap was laid and the applicant came to be apprehended on 21.5.2005 at 00:15 hours near said Lata Bar & Restaurant. On his personal search being taken, he was found in possession of revolver loaded with two live cartridges. During interrogation in the present offence, the applicant made voluntary statement that he was working for one Bharat Nepali, a henchman of gangster Chhota Rajan. The applicant further made statement that at the instance of Bharat Nepali, he had imported a container consisting 27 drums of grease from Bangkok and that a huge quantity of firearms and ammunitions were concealed in one of the drums in the the said container. The applicant then led the police party along with same panch witnesses to

"TransIndia Logistic Park", village Kaprole, Tal:Uran, Dist : Raigad and pointed out the container bearing No.TTNU3260463. During thorough search of the said container 34 foreign made revolvers, 3 pistols, one silencer and 1283 live cartridges were found concealed in 9 packets kept in one of the 27 drums. These articles were seized under panchnama.

4. During investigation carried out by Interpol - Bangkok, Thailand, it transpired that the first consignment of grease was imported in the month of February, 2005 from M/s. D.I.C. Trading (Thailand) Co. Ltd. by M/s. Sudarshan Agro-Bio Tech. Mumbai. Thereafter an order in the name of M/s Sudarshan Agro-Bio Tech. Mumbai for another consignment of grease was placed with Millennium Technology Co. Ltd. Thailand by the applicant accused and the payment was also made by him in cash. It may be mentioned here that two out of the three Directors of Millennium Technology Co. Ltd., Thailand who exported the grease consignment in the name of M/s. Sudarshan Agro-Bio Tech. Mumbai have criminal record to

their discredit. One of them was arrested on charge of violation of Firearms Act, while another was arrested on charge of illegal import of petrol without permission.

5. The learned APP also pointed out that the applicant accused had made several calls from his mobile numbers 9821260833 to international telephone number 66-18398338. From the report received from Interpol Bangkok, Thailand it is confirmed that the above said number 18398338 stands registered in the name of Mr.Rattnabhumi, who is one of the Director of Millennium Technology Co. Ltd., Thailand. This firm had exported the same consignment of grease drums containing the firearms and ammunitions, which were seized by police on 21.05.2005.

6. The learned APP further pointed out that investigations also revealed that the applicant accused was communicating with his associates involved in this case from the mobile seized from his person on 21.5.2005. The pocket diary of the applicant accused was containing overseas

telephone numbers which were found to be used by the wanted accused Chhota Rajan, Bharat Nepali and other associate - Balu Dhokre (since deceased).

7. The learned Advocate for the applicant submitted that applicant has been falsely implicated in this case which is clear from the fact that though it is stated by the investigating agency that the applicant was arrested on 21.5.2005, the applicant has clearly stated in his statement that he was arrested two days before, which would be 19.5.2005. In support of this contention, the learned Advocate for the applicant has placed reliance on the statement of the applicant wherein the applicant has stated that though he was produced in Court on 21.5.2005, he was arrested two days prior to that. He has also placed reliance on the statement of the coaccused i.e. original accused No.3 Yeshwant Yewale. As far as these two statements concerned they do not form part of the chargesheet. As far as the chargesheet is concerned, material as stated in paragraphs Nos.3 to 6 above, is reflected in the chargesheet. Hence, in such case at this stage no

reliance can be placed on the statements of the applicant and that of the coaccused.

8. Thereafter the learned Advocate for the applicant submitted that infact the consignment of grease had been imported into India since 11.5.2005 i.e. 10 days prior to arrest of the applicant. In spite of this, the DRI authorities remained totally silent till the Mumbai Police seized the drums as alleged by them. As far as this aspect is concerned, the learned APP has stated that the DRI authorities were unaware of the fact that fire arms and ammunitions were concealed in one of the 27 drums. It was only on 21.5.2005 at about 0:15 a.m., when the applicant made disclosure that he had concealed the fire arms and ammunitions in one of the drums in the above mentioned container and led them to JNPT that the fire arms etc. came to be seized.

9. Thereafter the learned Advocate for the applicant submitted that all these drums were exported from Bangkok and the records show that this consignment was checked at Bangkok before it

was loaded on the ship and exported to India. He submitted that had there been any firearms etc. in the consignment, the officers at Bangkok would have found it. He submitted that this shows that these articles were planted lateron and the applicant is falsely implicated in the said case. As far as this aspect is concerned, it is seen that the fire arms and ammunitions were concealed in one drum out of 27 drums of grease. The fire arms were not kept on the top of the grease but they were concealed inside the grease in the drum. It is not practicable for the inspecting officer to check each and every consignment in minute details, as huge quantity of consignments are daily loaded and off-loaded. Moreover even if it is checked, on opening the drum only grease would be seen, as the articles were concealed in the grease. Hence, just because the report indicates that the consignment was checked before it was loaded at Bangkok, it does not mean that these fire arms and ammunitions were not there in the drum when it was sent to India.

10. Lastly it was submitted by the learned

Advocate for the applicant that it is the prosecution case that the applicant was arrested in the night of 21.5.2005 and thereafter he led them to JNPT where the container was kept. The learned Advocate for the applicant has pointed out that the Delivery Gate Pass of JNPT Yard in respect of the drum of grease in which firearms and ammunitions were found bears the date 20.5.2005. On the basis of this, he has submitted that the applicant has clearly been falsely implicated in the said case as the Delivery Gate Pass of JNPT Yard bears the date 20.5.2005. He submitted that in such case the applicant could not have pointed out the drum on 21.5.2005.

11. As far as this aspect is concerned, the statement of the witness who has prepared the gate-pass has been recorded and he has stated that the gate-pass was prepared by him on 21.5.2005 at about 07:30 hours when the material was being taken out of the JNPT Yard. This witness has stated that however due to routine practice followed at TransIndia Logistic Park in issuing gate-passes, the date on the said gate-pass was

mentioned as 20.5.2005 by him. The Preventive Officer of Customs who was posted at the TransIndia Logistic Park on duty, on the day of seizure, the Deputy Director of D.R.I. and P.I. who has signed the said gate-pass, have confirmed the fact that the police had seized the firearms and ammunitions on 21.5.2005 and not on 20.5.2005 as alleged by the applicant. Thus, there is no merit in the ground raised by the applicant.

12. Lastly, it was submitted by the learned Advocate for the applicant that besides this case, the applicant has a clean record and he has been in custody for about two years, hence the applicant may be granted bail.

13. Looking to the material on record, it shows that the applicant is involved in the import of firearms and ammunitions concealed in one of drum out of 27 drums of grease. In view of the material collected by the prosecution and in view of the position regarding grant of bail as contemplated under Section 21(4) of the MCOC Act, I do not think that this is a fit case to grant

bail to the applicant. Application is rejected. Trial is expedited.

(SMT.V.K.TAHILRAMANI,J.)